

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROSE DELCURTO,

Plaintiff,

vs.

Civ. No. 02-587 WJ/WWD

SMITH'S FOOD & DRUG STORES,
INC., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter came before the Court on January 2, 2003, for a telephonic Rule 16 conference requested by the parties. The question presented was whether Defendant Karen Humphrey should be allowed to reschedule the taking of her deposition which is set for January 3, 2003. Due to certain personnel changes, Ms. Humphrey is apparently the only management level employee in the Smith's Food & Drug Store where she is employed. There are numerous Smith's Food & Drug Stores in Albuquerque according to the Albuquerque phone book of which I take judicial notice. The deposition set for tomorrow has been scheduled for some time, and was scheduled after counsel had conferred with each other and had agreed upon the time. There has been no suggestion that Smith's Food & Drug Stores would not be able to provide a management level employee from another store to permit the taking of Ms. Humphrey's deposition. Additionally, the training which Ms. Humphrey was expected to provide to an incoming employee was scheduled by Smith's Food & Drug Stores, Inc., also a defendant in this action, after the

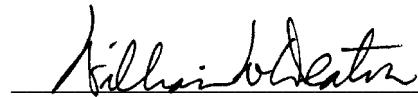
Humphrey deposition had been scheduled and noticed. Defendants' suggestion that the deposition be taken on January 8, 2003, is unacceptable since it will allow Plaintiff's counsel little, if any, time to utilize the deposition in preparing for the settlement conference set for January 9, 2003.

I have informed the parties that I would treat the issue posed as an oral motion for a protective order. In so doing, I find, that under all the circumstances set forth above, Defendant Karen Humphrey has failed to show good cause for the entry of a protective order by the Court.

WHEREFORE,

IT IS ORDERED that Defendant Karen Humphrey's oral motion for a protective order be, and it is hereby, DENIED.

IT IS FURTHER ORDERED that the deposition of Karen Humphrey proceed on Friday, January 3, 2003, as presently scheduled.



UNITED STATES MAGISTRATE JUDGE